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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/782,551

02/19/2004

Harry S. Sowden

MCP0295 DIV

5149

27777

7590

05/26/2006

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EXAMINER

HESS, DOUGLAS A

ART UNIT

PAPER NUMBER

3651

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/782,551

Applicant(s)

SOWDEN ET AL.

Examiner

Douglas A. Hess

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23,25,26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 21-23,25 and 26 is/are allowed.
- 6) ☐ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 9 is objected to because of the following informalities: It appears “rotatable” should be changed to --rotatable--. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 5, 7, 10-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Alexander USP 3330400. Alexander discloses a similar device comprising a(n):

- Flexible conveyor (fig. 21)
- Plurality of transfer units (27) that rotate while they are moved
- Cam track (46, 48)
- Means for driving said conveying means (inherent)
- Cam followers (44) that ride in said cam track (46, 48)
- Drive pulley (22 or 23) and idler pulley (22 or 23)
- Rotatable arm (43) linked to said transfer units (27)

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4. Claims 1, 2, 5, 7, and 10-20 are rejected under 35 U.S.C. 102(b) as being anticipated by DeVos USP 6234300. DeVos discloses a similar device comprising a(n):

- Flexible conveyor (12)
- Plurality of transfer units (17) that rotate while they are moved
- Cam track (28)
- Means for driving said conveying means (inherent)
- Cam followers (29) that ride in said cam track (28)
- Drive pulley (fig. 1) and idler pulley (fig. 1)
- First and second retainers (31) made of an elastomeric material
- Rotatable actuator arm & plunger shafts (fig. 3-5) linked to transfer units

SEE DeVos FIGURE 5 FOR A FIRST AND SECOND RETAINER. (MULTIPLE PAIRS OF RETAINERS 56 CAPABLE OF HANDLING multiple articles.

5. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of US Patent 6742646. Although the conflicting claims are not identical, they are not patentably distinct from each other because they only differ in obvious variations of breadth and scope.

***Allowable Subject Matter***

6. Claims 21-23, 25, and 26 are allowed.

*Conclusion*

7. Applicant's arguments filed May 8, 2006 have been fully considered but they are not persuasive. The mere addition of "one retainer having a shape that frictionally engages" does not provide a patentable departure. Any gripper or holder that makes contact with and article it holds is frictionally engaged and thereby the shape is for frictionally engaging, no matter what the shape.

Regarding the functional recitation regarding dosage or substrate, since these terms are merely functionally recited, and not claimed in combination with the device, any of the cited prior art is capable of supporting a generic dosage or substrate as claimed. The claims do not positively recite the dosage form as part of the invention.

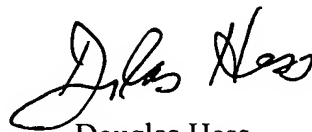
Regarding a transfer unit with a first and second retainer, Figure 5 of DeVos et al. where he discloses 3 different retainers (56) on one transfer device 57.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas Hess whose telephone number is (571) 272-6915. The examiner can normally be reached on Mon-Thur 5:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Douglas Hess  
Primary Examiner  
Art Unit 3651

5-23-06

DAH  
May 23, 2006